

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FIREMAN and ANN RAIDER,

Plaintiffs,

v.

Civil Action No. 05-11740-MLW

NEWS AMERICA MARKETING IN-STORE,
INC.,

Defendant.

**DEFENDANT'S MOTION FOR LEAVE TO FILE A SUR-REPLY TO
PLAINTIFFS' REPLY TO OPPOSITION TO PLAINTIFFS' MOTION TO
COMPEL RESPONSES TO DISCOVERY REQUESTS FROM DEFENDANT**

Pursuant to Local Rule 7.1(B)(3), Defendant News America Marketing In-Store, Inc. ("NAM") respectfully moves for leave to file a sur-reply to Plaintiffs' Reply to Opposition to Plaintiffs' Motion to Compel Responses to Discovery Requests from Defendant.

The proposed sur-reply is necessary because Plaintiffs' incorrectly state the applicable federal procedural and substantive New York law (the latter of which is discussed in text by them for the *first* time in their reply). Further, Plaintiffs misrepresent and fail to discuss completely the discovery record to date. Finally, counsel for Plaintiffs has agreed *not to oppose* this motion.

In light of the substantial stakes (more than \$13 million) at issue in Plaintiffs' underlying motion to compel and the reasons set forth above, NAM respectfully requests that leave to file a sur-reply be allowed.

NEWS AMERICA MARKETING IN-STORE,
INC.

By its attorneys,

/s/ Gordon P. Katz

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Dated: June 19, 2007
Boston, Massachusetts

CERTIFICATION PURSUANT TO LOCAL RULES 7.1 and 37.1

I, Gordon P. Katz, hereby certify pursuant to Rules 7.1. and 37.1 of the Local Rules of the United States District Court for the District of Massachusetts that I have made a reasonable and good faith effort to reach agreement with counsel for Robert Fireman and Ann Raider, on the matter that is subject to this motion. I corresponded through e-mail with Kevin Peters on June 8, 2007, and counsel for Plaintiffs agreed not to oppose this motion.

/s/ Gordon P. Katz
Gordon P. Katz

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 19th day of June, 2007.

/s/ Gordon P. Katz
Gordon P. Katz